

**DRAFT**

**POLICE AND CRIMINAL EVIDENCE ACT (PACE)**

**CODE E**

**CODE OF PRACTICE ON AUDIO RECORDING INTERVIEWS WITH SUSPECTS**

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Presented to Parliament under section 67(7B) of the  
Police and Criminal Evidence Act 1984 (PACE)

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## **POLICE AND CRIMINAL EVIDENCE ACT (PACE)**

### **CODE E**

# **CODE OF PRACTICE ON AUDIO RECORDING INTERVIEWS WITH SUSPECTS**

#### **Commencement - Transitional Arrangements**

This code applies to interviews carried out after midnight on 1 May 2010, notwithstanding that the interview may have commenced before that time.

# 1 General

- 1.1 This Code of Practice must be readily available for consultation by:
- police officers
  - police staff
  - detained persons
  - members of the public.
- 1.2 The *Notes for Guidance* included are not provisions of this Code.
- 1.3 Nothing in this Code shall detract from the requirements of Code C, the Code of Practice for the detention, treatment and questioning of persons by police officers.
- 1.4 This Code does not apply to those people listed in Code C, *paragraph 1.12*.
- 1.5 The term:
- ‘appropriate adult’ has the same meaning as in Code C, *paragraph 1.7*
  - ‘solicitor’ has the same meaning as in Code C, *paragraph 6.12*.
- 1.5A Recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.
- 1.6 In this Code:
- (aa) ‘recording media’ means any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied.
  - (a) ‘designated person’ means a person other than a police officer, designated under the Police Reform Act 2002, Part 4 who has specified powers and duties of police officers conferred or imposed on them;
  - (b) any reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation.
  - (c) ‘secure digital network’ is a computer network system which enables an original interview recording to be stored as a digital multi media file or a series of such files, on a secure file server which is accredited by the National Accrerator for Police Information Systems in the National Police Improvement Agency (NPIA) in accordance with the UK Government Protective Marking Scheme. (see section 7 of this Code).
- 1.7 Sections 2 to 6 of this code set out the procedures and requirements which apply to all interviews together with the provisions which apply only to interviews recorded using removable media. Section 7 sets out the provisions which apply to interviews recorded using a secure digital network and specifies the provisions in sections 2 to 6 which do not apply to secure digital network recording.
- 1.8 Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing police staff who are not designated persons to carry out individual procedures or tasks at the police station if the law allows. However, the officer remains responsible for making sure the procedures and tasks are carried out correctly in accordance with this Code. Any such police staff must be:
- (a) a person employed by a police authority maintaining a police force and under the control and direction of the Chief Officer of that force; or
  - (b) employed by a person with whom a police authority has a contract for the provision of services relating to persons arrested or otherwise in custody.
- 1.9 Designated persons and other police staff must have regard to any relevant provisions of the Codes of Practice.
- 1.10 References to pocket book include any official report book issued to police officers or police staff.
- 1.11 References to a custody officer include those performing the functions of a custody officer as in *paragraph 1.9* of Code C.

## **2 Recording and sealing master recordings**

- 2.1 *Not used.*
- 2.2 One recording, the master recording, will be sealed in the suspect's presence. A second recording will be used as a working copy. The master recording is either of the two recordings used in a twin deck/drive machine or the only recording in a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine. See *Notes 2A and 2B [This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 to 7.6]*
- 2.3 Nothing in this Code requires the identity of officers or police staff conducting interviews to be recorded or disclosed:
- (a) in the case of enquiries linked to the investigation of terrorism (see paragraph 3.2); or
  - (b) if the interviewer reasonably believes recording or disclosing their name might put them in danger.

In these cases interviewers should use warrant or other identification numbers and the name of their police station. See *Note 2C*

### **Notes for guidance**

- 2A *The purpose of sealing the master recording in the suspect's presence is to show the recording's integrity is preserved. If a single deck/drive machine is used the working copy of the master recording must be made in the suspect's presence and without the master recording leaving their sight. The working copy shall be used for making further copies if needed.*
- 2B *Not used.*
- 2C *The purpose of paragraph 2.3(b) is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In cases of doubt, an officer of inspector rank or above should be consulted.*

### 3 Interviews to be audio recorded

- 3.1 Subject to *paragraphs 3.3 and 3.4*, audio recording shall be used at police stations for any interview:
- (a) with a person cautioned under Code C, *section 10* in respect of any indictable offence, including an offence triable either way, see *Note 3A*
  - (b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in *paragraph 3.1(a)* after they have been charged with, or told they may be prosecuted for, that offence, see Code C, *paragraph 16.5*
  - (c) when an interviewer wants to tell a person, after they have been charged with, or informed they may be prosecuted for, an offence described in *paragraph 3.1(a)*, about any written statement or interview with another person, see Code C, *paragraph 16.4*.
- 3.2 The Terrorism Act 2000 makes separate provision for a Code of Practice for the audio recording of interviews of those arrested under Section 41 of, or Schedule 7 to, the 2000 Act. The provisions of this Code do not apply to such interviews. [See *Note 3C*].
- 3.3 The custody officer may authorise the interviewer not to audio record the interview when it is:
- (a) not reasonably practicable because of equipment failure or the unavailability of a suitable interview room or recording equipment and the authorising officer considers, on reasonable grounds, that the interview should not be delayed; or
  - (b) clear from the outset there will not be a prosecution.
- Note: In these cases the interview should be recorded in writing in accordance with Code C, *section 11*. In all cases the custody officer shall record the specific reasons for not audio recording. See *Note 3B*
- 3.4 If a person refuses to go into or remain in a suitable interview room, see Code C *paragraph 12.5*, and the custody officer considers, on reasonable grounds, that the interview should not be delayed the interview may, at the custody officer's discretion, be conducted in a cell using portable recording equipment or, if none is available, recorded in writing as in Code C, *section 11*. The reasons for this shall be recorded.
- 3.5 The whole of each interview shall be audio recorded, including the taking and reading back of any statement.
- 3.6 A sign or indicator which is visible to the suspect must show when the recording equipment is recording.

#### Notes for guidance

- 3A *Nothing in this Code is intended to preclude audio recording at police discretion of interviews at police stations with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by persons after they have been charged with, or told they may be prosecuted for, an offence, provided this Code is complied with.*
- 3B *A decision not to audio record an interview for any reason may be the subject of comment in court. The authorising officer should be prepared to justify that decision.*
- 3C *If, during the course of an interview under this Code, it becomes apparent that the interview should be conducted under one of the terrorism codes for recording of interviews the interview should only continue in accordance with the relevant code.*



## 4 The interview

### (a) General

#### 4.1 The provisions of Code C:

- *sections 10 and 11*, and the applicable *Notes for Guidance* apply to the conduct of interviews to which this Code applies
- *paragraphs 11.7 to 11.14* apply only when a written record is needed.

#### 4.2 Code C, *paragraphs 10.10, 10.11* and Annex C describe the restriction on drawing adverse inferences from a suspect's failure or refusal to say anything about their involvement in the offence when interviewed or after being charged or informed they may be prosecuted, and how it affects the terms of the caution and determines if and by whom a special warning under sections 36 and 37 of the Criminal Justice and Public Order Act 1994 can be given.

### (b) Commencement of interviews

#### 4.3 When the suspect is brought into the interview room the interviewer shall, without delay but in the suspect's sight, load the recorder with new recording media and set it to record. The recording media must be unwrapped or opened in the suspect's presence. *[This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.5].*

#### 4.4 The interviewer should tell the suspect about the recording process and point out the sign or indicator which shows that the recording equipment is activated and recording. See *paragraph 3.6*. The interviewer shall:

- (a) say the interview is being audibly recorded
- (b) subject to *paragraph 2.3*, give their name and rank and that of any other interviewer present
- (c) ask the suspect and any other party present, e.g. a solicitor, to identify themselves
- (d) state the date, time of commencement and place of the interview
- (e) state the suspect will be given a notice about what will happen to the copies of the recording. *[This sub-paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.6 to 7.7]*

See *Note 4A*

#### 4.5 The interviewer shall:

- caution the suspect, see Code C, *section 10*
- remind the suspect of their entitlement to free legal advice, see Code C, *paragraph 11.2*.

#### 4.6 The interviewer shall put to the suspect any significant statement or silence, see Code C, *paragraph 11.4*.

### (c) Interviews with deaf persons

#### 4.7 If the suspect is deaf or is suspected of having impaired hearing, the interviewer shall make a written note of the interview in accordance with Code C, at the same time as audio recording it in accordance with this Code. See *Notes 4B and 4C*

### (d) Objections and complaints by the suspect

#### 4.8 If the suspect objects to the interview being audibly recorded at the outset, during the interview or during a break, the interviewer shall explain that the interview is being audibly recorded and that this Code requires the suspect's objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect has refused to have their objections recorded, the interviewer shall say they are turning off the recorder, give their reasons and turn it off. The interviewer shall then make a written record of the interview as in Code C, *section 11*. If, however, the interviewer reasonably considers they may proceed to question the suspect with the audio recording still on, the interviewer may do so. This

procedure also applies in cases where the suspect has previously objected to the interview being visually recorded, see *Code F 4.8*, and the investigating officer has decided to audibly record the interview. See *Note 4D*

- 4.9 If in the course of an interview a complaint is made by or on behalf of the person being questioned concerning the provisions of this Code or Code C, the interviewer shall act as in Code C, *paragraph 12.9*. See *Notes 4E* and *4F*
- 4.10 If the suspect indicates they want to tell the interviewer about matters not directly connected with the offence and they are unwilling for these matters to be audio recorded, the suspect should be given the opportunity to tell the interviewer at the end of the formal interview.

#### (e) Changing recording media

- 4.11 When the recorder shows the recording media only has a short time left, the interviewer shall tell the suspect the recording media are coming to an end and round off that part of the interview. If the interviewer leaves the room for a second set of recording media, the suspect shall not be left unattended. The interviewer will remove the recording media from the recorder and insert the new recording media which shall be unwrapped or opened in the suspect's presence. The recorder should be set to record on the new media. To avoid confusion between the recording media, the interviewer shall mark the media with an identification number immediately after they are removed from the recorder. *[This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see paragraphs 1.6(c), 7.4 and 7.14 to 7.15.]*

#### (f) Taking a break during interview

- 4.12 When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the audio recording.
- 4.12A When the break is taken and the interview room vacated by the suspect, the recording media shall be removed from the recorder and the procedures for the conclusion of an interview followed, see *paragraph 4.18*.
- 4.13 When a break is a short one and both the suspect and an interviewer remain in the interview room, the recording may be stopped. There is no need to remove the recording media and when the interview recommences the recording should continue on the same recording media. The time the interview recommences shall be recorded on the audio recording.
- 4.14 After any break in the interview the interviewer must, before resuming the interview, remind the person being questioned that they remain under caution or, if there is any doubt, give the caution in full again. See *Note 4G*.

*[Paragraphs 4.12 to 4.14 do not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.8 to 7.10]*

#### (g) Failure of recording equipment

- 4.15 If there is an equipment failure which can be rectified quickly, e.g. by inserting new recording media, the interviewer shall follow the appropriate procedures as in *paragraph 4.11*. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that recorder and no replacement recorder is readily available, the interview may continue without being audibly recorded. If this happens, the interviewer shall seek the custody officer's authority as in *paragraph 3.3*. See *Note 4H* *[This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.11]*

#### (h) Removing recording media from the recorder

- 4.16 When recording media is removed from the recorder during the interview, they shall be retained and the procedures in *paragraph 4.18* followed. *[This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see 1.6(c), 7.4 and 7.14 to 7.15.]*

### (i) Conclusion of interview

- 4.17 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.
- 4.18 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the recording shall be stopped. The interviewer shall seal the master recording with a master recording label and treat it as an exhibit in accordance with force standing orders. The interviewer shall sign the label and ask the suspect and any third party present during the interview to sign it. If the suspect or third party refuse to sign the label an officer of at least inspector rank, or if not available the custody officer, shall be called into the interview room and asked, subject to *paragraph 2.3*, to sign it.
- 4.19 The suspect shall be handed a notice which explains:
- how the audio recording will be used
  - the arrangements for access to it
  - that if the person is charged or informed they will be prosecuted, a copy of the audio recording will be supplied as soon as practicable or as otherwise agreed between the suspect and the police or on the order of a court.

*[Paragraphs 4.17 to 4.19 do not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.12 to 7.13]*

### Notes for guidance

- 4A *For the purpose of voice identification the interviewer should ask the suspect and any other people present to identify themselves.*
- 4B *This provision is to give a person who is deaf or has impaired hearing equivalent rights of access to the full interview record as far as this is possible using audio recording.*
- 4C *The provisions of Code C, section 13 on interpreters for deaf persons or for interviews with suspects who have difficulty understanding English continue to apply.*
- 4D *The interviewer should remember that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.*
- 4E *If the custody officer is called to deal with the complaint, the recorder should, if possible, be left on until the custody officer has entered the room and spoken to the person being interviewed. Continuation or termination of the interview should be at the interviewer's discretion pending action by an inspector under Code C, paragraph 9.2.*
- 4F *If the complaint is about a matter not connected with this Code or Code C, the decision to continue is at the interviewer's discretion. When the interviewer decides to continue the interview, they shall tell the suspect the complaint will be brought to the custody officer's attention at the conclusion of the interview. When the interview is concluded the interviewer must, as soon as practicable, inform the custody officer about the existence and nature of the complaint made.*
- 4G *The interviewer should remember that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the suspect's recorded evidence. After a break or at the beginning of a subsequent interview, the interviewer should consider summarising on the record the reason for the break and confirming this with the suspect.*
- 4H *Where the interview is being recorded and the media or the recording equipment fails the officer conducting the interview should stop the interview immediately. Where part of the interview is unaffected by the error and is still accessible on the media, that media shall be copied and sealed in the suspect's presence and the interview recommenced using new equipment/media as required. Where the content of the interview has been lost in its entirety the media should be sealed in the suspect's presence and the interview begun again. If the recording equipment cannot be fixed or no replacement is immediately available the interview should be recorded in accordance with Code C, section 11.*

## 5 After the interview

- 5.1 The interviewer shall make a note in their pocket book that the interview has taken place, was audibly recorded, its time, duration and date and the master recording's identification number.
- 5.2 If no proceedings follow in respect of the person whose interview was recorded, the recording media must be kept securely as in *paragraph 6.1* and *Note 6A*.

*[This section (paragraphs 5.1, 5.2 and Note 5A) does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.14 to 7.15]*

### **Note for guidance**

- 5A *Any written record of an audibly recorded interview should be made in accordance with national guidelines approved by the Secretary of State, and with regard to the advice contained in the Manual of Guidance for the preparation, processing and submission of prosecution files.*

## 6 Media security

- 6.1 The officer in charge of each police station at which interviews with suspects are recorded shall make arrangements for master recordings to be kept securely and their movements accounted for on the same basis as material which may be used for evidential purposes, in accordance with force standing orders. See *Note 6A*.
- 6.2 A police officer has no authority to break the seal on a master recording required for criminal trial or appeal proceedings. If it is necessary to gain access to the master recording, the police officer shall arrange for its seal to be broken in the presence of a representative of the Crown Prosecution Service. The defendant or their legal adviser should be informed and given a reasonable opportunity to be present. If the defendant or their legal representative is present they shall be invited to reseal and sign the master recording. If either refuses or neither is present this should be done by the representative of the Crown Prosecution Service. See *Notes 6B and 6C*.
- 6.3 If no criminal proceedings result or the criminal trial and, if applicable, appeal proceedings to which the interview relates have been concluded, the chief officer of police is responsible for establishing arrangements for breaking the seal on the master recording, if necessary.
- 6.4 When the master recording seal is broken, a record must be made of the procedure followed, including the date, time, place and persons present.

*[This section (paragraphs 6.1 to 6.4 and Notes 6A to 6C) does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.14 to 7.15]*

### **Notes for guidance**

- 6A *This section is concerned with the security of the master recording sealed at the conclusion of the interview. Care must be taken of working copies of recordings because their loss or destruction may lead to the need to access master recordings.*
- 6B *If the recording has been delivered to the crown court for their keeping after committal for trial the crown prosecutor will apply to the chief clerk of the crown court centre for the release of the recording for unsealing by the crown prosecutor.*
- 6C *Reference to the Crown Prosecution Service or to the crown prosecutor in this part of the Code should be taken to include any other body or person with a statutory responsibility for prosecution for whom the police conduct any audibly recorded interviews.*

## 7 Recording of Interviews by Secure Digital Network

- 7.1 A secure digital network does not use removable media and this section specifies the provisions which will apply when a secure digital network is used.

7.2 Not used.

7.3 The following requirements are solely applicable to the use of a secure digital network for the recording of interviews.

**(a) Application of sections 1 to 6 of Code E**

7.4 Sections 1 to 6 of Code E above apply except for the following paragraphs:

- Paragraph 2.2 under “Recording and sealing of master recordings”
- Paragraph 4.3 under “(b) Commencement of interviews”
- Paragraph 4.4 (e) under “(b) Commencement of interviews”
- Paragraphs 4.11 - 4.19 under “(e) Changing recording media”, “(f) Taking a break during interview”, “(g) Failure of recording equipment”, “(h) Removing recording media from the recorder” and “(i) Conclusion of interview”
- Paragraphs 6.1 - 6.4 and Notes 6A to 6C under “Media security”

**(b) Commencement of Interview**

7.5 When the suspect is brought into the interview room, the interviewer shall without delay and in the sight of the suspect, switch on the recording equipment and enter the information necessary to log on to the secure network and start recording.

7.6 The interviewer must then inform the suspect that the interview is being recorded using a secure digital network and that recording has commenced.

7.7 In addition to the requirements of paragraph 4.4 (a - d) above, the interviewer must inform the person that:

- they will be given access to the recording of the interview in the event that they are charged or informed that they will be prosecuted but if they are not charged or informed that they will be prosecuted they will only be given access as agreed with the police or on the order of a court; and
- they will be given a written notice at the end of the interview setting out their rights to access the recording and what will happen to the recording.

**(c) Taking a break during interview**

7.8 When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the audio recording. The recording shall be stopped and the procedures in paragraphs 7.12 and 7.13 for the conclusion of an interview followed.

7.9 When the interview recommences the procedures in paragraphs 7.5 to 7.7 for commencing an interview shall be followed to create a new file to record the continuation of the interview. The time the interview recommences shall be recorded on the audio recording.

7.10 After any break in the interview the interviewer must, before resuming the interview, remind the person being questioned that they remain under caution or, if there is any doubt, give the caution in full again. See *Note 4G*

**(d) Failure of recording equipment**

7.11 If there is an equipment failure which can be rectified quickly, e.g. by commencing a new secure digital network recording, the interviewer shall follow the appropriate procedures as in *paragraphs 7.8 to 7.10*. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. If, however, it is not possible to continue recording on the secure digital network the interview should be recorded on removable media as in *paragraph 4.3* unless the necessary equipment is not available. If this

happens the interview may continue without being audibly recorded and the interviewer shall seek the custody officer's authority as in *paragraph 3.3*. See *Note 4H*.

**(e) Conclusion of interview**

- 7.12 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.
- 7.13 At the conclusion of the interview, including the taking and reading back of any written statement:
- (a) the time shall be orally recorded
  - (b) the suspect shall be handed a notice which explains:
    - how the audio recording will be used
    - the arrangements for access to it
    - that if they are charged or informed that they will be prosecuted, they will be given access to the recording of the interview either electronically or by being given a copy on removable recording media, but if they are not charged or informed that they will be prosecuted, they will only be given access as agreed with the police or on the order of a court.

See *Note 7A*.

- (c) the suspect must be asked to confirm that he or she has received a copy of the notice at paragraph 7.13(b) above. If the suspect fails to accept or to acknowledge receipt of the notice, the interviewer will state for the recording that a copy of the notice has been provided to the suspect and that he or she has refused to take a copy of the notice or has refused to acknowledge receipt.
- (d) the time shall be recorded and the interviewer shall notify the suspect that the recording is being saved to the secure network. The interviewer must save the recording in the presence of the suspect. The suspect should then be informed that the interview is terminated.

**(f) After the interview**

- 7.14 The interviewer shall make a note in their pocket book that the interview has taken place, was audibly recorded, its time, duration and date and the original recording's identification number.
- 7.15 If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely as in *paragraphs 7.16 and 7.17*.

See *Note 5A*

**(g) Security of secure digital network interview records**

- 7.16 Interview record files are stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings are first saved locally to a secure non-removable device before being transferred to the remote network device. If for any reason the network connection fails, the recording remains on the local device and will be transferred when the network connections are restored.
- 7.17 Access to interview recordings, including copying to removable media, must be strictly controlled and monitored to ensure that access is restricted to those who have been given specific permission to access for specified purposes when this is necessary. For example, police officers and CPS lawyers involved in the preparation of any prosecution case, persons interviewed if they have been charged or informed they may be prosecuted and their legal representatives.

**Note for Guidance**

7A The notice at paragraph 7.13 above should provide a brief explanation of the secure digital network and how access to the recording is strictly limited. The notice should also explain the access rights of the suspect, his or her legal representative, the police and the prosecutor to the recording of the interview. Space should be provided on the form to insert the date and the file reference number for the interview.

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